HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION No.1684 of 2007

Between:

Hyderabad Engineering Industries Limited
(A division of Jay Engineering Limited),
Balanagar Township, Hyderabad-37,
Rep by its Assistant General Manager

… Petitioner

AND

State of Andhra Pradesh
Rep by Secretary,
Municipal Administration,
Hyderabad.
and another.

… Respondents

; ORDER :

Counsel for the petitioner : Shri S.Ravi

Counsel for respondent No.1 : Government Pleader for
Municipal Administration

Counsel for respondent No.2 : Sri P.Radha Krishna

Dated: June, 2007

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Per C.V.NAGARJUNA REDDY, J.

This writ petition is filed for a writ of mandamus to set aside notice dated 11.11.2006 issued by Kukatpally Municipality, Hyderabad whereunder a sum of Rs.78,71,739/- is demanded towards property tax and penalties.

This case is a paradigm of how a resourceful citizen can successfully frustrate laws of the land with the active connivance of the official machinery of the State, to evade payment of taxes for decades.

The petitioner, which is a unit of Jay Engineering Works Limited is involved in manufacture of ceiling fans and sewing machines. Though in the writ petition it is claimed by the petitioner that the company was declared a sick unit by the Board for Industrial and Financial Reconstruction, no material in support of the said plea is filed in this writ petition. The petitioner received a demand notice No.2098 dated 12.12.1990 from respondent No.2 under Rule 8 of the Rules framed under Schedule-II of the Andhra Pradesh Municipalities Act 1965 (for short, 'the Act') whereunder the property tax was revised from Rs.22,873.32 ps. to Rs.55,585-20 ps. The petitioner filed a revision before respondent as provided under Rule 12. The said revision was dismissed by respondent No.2 on 11.4.1991. The petitioner filed Writ Petition No.7667 of 1991 before this court and the said writ petition was disposed of by a Division Bench of this Court by its order dated 1.7.1991 inter alia giving liberty to the petitioner to file an appeal on or before 16.7.1991 and the petitioner shall deposit Rs.39,000/-. The petitioner accordingly deposited the said amount and filed an appeal before the Appellate Commissioner under Rule 22

and the said appeal was dismissed by an order dated 1.6.1993.

The petitioner then filed O.S.No.478 of 1994 before the Principal District Munsif, Hyderabad West and South, Ranga Reddy district at Saroornagar for declaration that the demand notice dated 12.12.1990 is null and void and for a consequential injunction to restrain the defendants therein including respondent No.2 from collecting the taxes in pursuance of the order dated 11.4.1991 passed by the Appellate Commissioner. The petitioner filed I.A.No.917 of 1994 in the said suit for an ad interim injunction and the Principal District Munsif by an order dated 8.11.1994 allowed the petition after setting the defendant ex parte. The said suit was decreed ex parte on 01.04.1996. Evidently neither the application to set aside the ex parte decree was filed nor an appeal was filed by respondent No.2 against the said decree which was thus allowed to become final.

During the pendency of the suit respondent No.2 issued a fresh demand notice dated 10.2.1995, enhancing the property tax to Rs.1,11,168.40 ps. The petitioner sent a reply dated 14.2.1995 wherein it was brought to the notice of respondent No.2 that an interim injunction was granted by the civil court in O.S.No.478 of 1994 restraining him from collecting the tax at enhanced rates. It appears respondent No.2 was satisfied with the said reply and kept quiet.

From the averments contained in para-8 of the affidavit filed in the writ petition it is evident that the petitioner stopped payment of property tax including admitted tax from the year 1990-91 and after the disposal of the suit on 1.4.1996 it has claimed to have paid Rs.74,998.57 ps. towards the admitted arrears from 1990-91 to 1995-96. However from the respondents' side there was a complete lull as no demand was raised for the years 1996-97, 1997-98, 1998-99 and 1999-2000. Waking up from the hibernation respondent No.2 sent a

demand notice dated 13.12.2001 wherein the property tax was enhanced from 1,11,168.40 ps. to Rs.2,71,365/-for the year 2000-2001. Having issued the demand notice respondent No.2 again went into the slumber without taking any steps for its recovery. The petitioner neither questioned the said demand notice nor paid the tax. Again respondent No.2 issued another demand notice dated 7.10.2002 while enhancing the property tax from 2,71,365/- to 5,42,730/- in the year 2002-2003. Even this demand was not enforced by the respondents and they were rest content by receiving the property tax at Rs.22,873.32 ps. which was the tax prevailing prior to the year 1990-91. After a gap of more than three years respondent No.2 issued a demand notice dated 28.1.2006 for a sum of Rs.64,83,282/- towards arrears including penalty of Rs.28,91,528/-. Without enforcing the said notice respondent No.2 again issued another notice dated 29.7.2006 demanding a sum of Rs.71,69,370/- and this was followed by another notice dated 11.11.2006. In response to every notice petitioner used to send stock replies to the effect that since there is a decree passed by a civil court in O.S.No.478 of 1994, further enhancement of tax and its demand is wholly impermissible and illegal. The last of the notices issued by respondent was notice dated 11.11.2006 and though there appeared no realistic threat of recovery of tax the petitioner appeared to have eventually decided to file a writ petition and accordingly it filed the present writ petition questioning the demand notice dated 11.11.2006.

In the affidavit filed in support of the writ petition, the petitioner narrated events spanning over 17 years which included various demand notices issued by respondent No.2, its filing suit, obtaining ex parte injunction, ex parte decree and accumulation of huge arrears of property tax to a tune of Rs.78,71,739/-, which, as already noted

include the penalty amounting to Rs.37,37,255/-. The primordium of the petitioner's stand as could be culled out through pleadings contained in the affidavit in the writ petition is that respondent No.2 was insensitive to the decree passed by a competent civil court in O.S.No.478 of 1994 and was 'recalcitrant' in continuing to issue demand notices despite the said decree. However, it is interesting to note the averments in paras-15 and 16 of the affidavit, which are apt to be extracted hereunder:

> " It is submitted that the persistent demands made by the respondent are illegal, arbitrary and unlawful. Except the special notice which was issued on 12.12.1990 which was the subject matter of the civil suit in O.S.No.478 of 1994, the respondent never issued any special notice thereafter. Therefore, the only basis for all the demands that the respondent has made from time to time is the notice which was under challenge. While no doubt the principle of res judicata may not be applicable for the tax proposed, it is nevertheless incumbent that if the respondents proposed to enhance the levy of tax they should be following proper procedure known to law. In the absence of any notice proposing to enhance the tax, it is evident that the only basis for such higher demand was the notice which was already challenged.
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> The petitioner has succeeded in that challenge before the civil court and the judgment of the civil court has become final. The respondents never sought to enforce the additional demands that they raised from time to time knowing fully well that the issue with respect to the determination of higher tax was sub judice and was pending before the civil court. Such being the case, the demand for higher tax now for all the years and that too after the respondents had lost the civil suit would be illegal and arbitrary." (Emphasis added)

After taking time on three occasions Smt.K.Shiva Parvathi, Commissioner, Kukatpally Municipality – respondent No.2 filed

counter affidavit evidently on 26.2.2007. The contents of the counter affidavit are interesting, nay, amusing. The substantial part of the counter affidavit is devoted to pointing out what the petitioner pleaded in it's affidavit (paras-6, 7, 8 and 10). In reply to the plea of the petitioner that the decree in O.S.No.478 of 1994 dated 01.4.1996 has become final, respondent No.2 stated in para-11 of the counter affidavit as under:

> " It is respectfully submitted that in reply to para-9 of the affidavit, I submit that it has to be verified whether any appeal preferred by Kukatpally Municipality against the judgment and decree passed in O.S.No.478 of 1994 dated 01.4.1994 on the file of the District Munsiff…."

However, while countering the plea of the petitioner that respondent No.2 could not have issued demand notices in the face of the decree passed in O.S.No.478 of 1994, the Commissioner in paras-11 and 12 stated as under:

> " It is respectfully submitted that suit O.S.No.478 of 1994 was filed only challenging the notice dated 12.12.1990 and not the subsequent notices, after every five years the revision of property tax shall take place.
>
> It is respectfully submitted that in reply to para-10 of the affidavit, I submit that another demand notice dated 7.10.2002 was issued enhancing the property tax to Rs.5,42,730/-. The contention of the petitioner that the petitioner is paying property tax at old rate of Rs.22,873.32ps. according to decree passed by the learned Judge in O.S.No.478 of 1994 till the year 2005-06 is absolutely incorrect. The petitioner is bound to pay the enhanced property tax from 10.2.1995 to till date as he has not preferred any revision or appeal before the competent authority, the decree of the learned Principal District Munsiff passed in O.S.No.478 of 1994 will not be applicable to the demand notices from the year 2002 onwards."

Respondent No.2 has also taken a plea in the counter affidavit that the writ petition filed questioning the demand notice dated 11.11.2006 is not maintainable in view of the availability of remedy of revision under Rule-12 of Schedule-II of the Act (Taxation and Finance Rules) and a further appeal to the Appellate Commissioner under Rule 22(1) of the said schedule.

During the hearing of the case on 13.3.2007 as the learned counsel for the petitioner submitted that the alternative remedy provided under Rule 22 of the Taxation and Finance Rules contained in Schedule-II of the Act is not available to his client, we asked the learned Standing Counsel to clarify his stand on this aspect. Finding that we were not in agreement with his stand which was supportive of the contentions of the learned counsel for the petitioner on the issue of availability of alternative remedy, he made a request for adjournment to enable his client to file additional counter affidavit with the relevant documents. Accepting his request, we adjourned the case.

Sri D.Marianna, Municipal Engineer and Incharge Commissioner (the regular Commissioner Ms.K.Shiva Parvathi was stated to be on medical leave) filed an additional counter affidavit wherein he stated that by inadvertence the fact whether the special notice dated 12.12.1990 was served on the petitioner was not mentioned in the counter affidavit and he further stated that the special notice was served on Sri Devender Singh, Manager of the petitioner industry though he refused to sign on the special notice. He also stated that subsequent notices dated 18.8.2003, 28.1.2006, 29.7.2006 and 11.11.2006 were also served on the security guards of the petitioner as the municipal staff were not allowed to enter into the petitioner's premises. It is further stated that the petitioner is liable to pay property

tax to a tune of Rs.83,51,595/- as on the date of filing of the additional counter affidavit and that the petitioner used to give cheques for payment of property tax at his own calculations and not on the basis of the demand notice issued by the municipality and that since the cheques were being submitted in the inward section of the municipality without obtaining any receipt from it, he is not in a position to specify the exact amount which the petitioner was paying towards property tax. Certain demand notices referred to in the additional counter affidavit were also enclosed to it.

We have heard Sri S.Ravi, learned counsel for the petitioner and Sri P.Radha Krishna, learned counsel for respondent No.2.

Sri S.Ravi learned counsel for petitioner contended that since the decree passed in O.S.No.478 of 1994 has become final it was not open to respondent No.2 to enhance the property tax. He further submitted that none of the demand notices whereunder property tax was enhanced from the year 2000-2001 was preceded by any notice.

Before we go to the utter indifferent and lacklustre conduct of the functionaries of the Kukatpally municipality, we would like to first deal with the writ petition on merits.

From the aforementioned narration of the facts it is clear that as the petitioner's efforts to get the demand notice No.2098 dated 12.12.1990 nullified before the revisional and the appellate authority did not fructify, it approached the civil court by way of civil suit which is registered as O.S.No.478 of 1994. Initially it got an ex parte injunction and later it succeeded in getting an ex parte decree passed. The said decree is to the following effect:

> " **Claim**: Suit for declaration declaring the notice dated 12.12.1990 as null and void and consequential restraining the defendants on collection of taxes in respect of the plaintiffs company in pursuance of the proceedings dated 11.4.1991 by way of injunction.

Valuation: Suit is valued at Rs.32,873.20 and Court fee of Rs.1906/- is paid U/s.24(d) of A.P.C.F.& S.V.Act, 1956.

Cause of Action: Arose at Balanagar on 12.12.1990 on 10.1.1991, 10.6.1991, 26.8.1994.

Plaint Presented on : 23.9.1994

Plaint numbered on: 6.10.1994.

This suit coming on this day for final hearing before me in the presence of Shri D.Madhava Rao, Advocate for plaintiffs and the defendants having set ex parte and the court doth order and decree as follows:

1. That declare the notice dated 12.12.1990 as null and void.
2. And that the defendants are hereby restrained from consequential restrained in collection of taxes in respect of plaintiff's company in pursuance of the proceedings dated 11.4.1991 by way of consequential injunction.
3. That the defendants do pay a sum of Rs.3068/- to the plaintiff towards costs of the suit."

Though an equivocal statement was made by the 2nd respondent in her counter-affidavit that she has to verify whether an appeal was filed against the decree in the said suit, even in the additional counter affidavit no information was given in this regard. Therefore, in the absence of any material to contradict the petitioner's plea that the decree has become final, it is reasonable to presume that the decree has become final. But the question is what is the effect of decree and whether the respondents are disentitled to make future enhancements under the decree?

As could be seen from the above reproduced decree it is clear that the demand notice dated 12.12.1990 is declared as null and void. The said demand notice which is filed as Ex.P2 shows that under the said notice the property tax has been enhanced to Rs.55,582.20 ps. for the year 1990-91 and that the said enhancement will last till fresh notice of enhancement is issued. While invalidating the notice dated

12.12.1990, the civil court has not injuncted the respondent No.2 from issuing demand notices in future. We are therefore of the considered opinion that the decree against enhancement will operate only till such time as fresh notice of enhancement is issued. Admittedly respondent No.2 had issued fresh demand notice dated 10.2.1995 whereunder the property tax was enhanced from Rs.55,582.20 ps. to Rs.1,11,168.40 ps. (Ex.P7) and the tax was further enhanced vide demand notice dated 13.12.2001 from Rs.1,11,168.40 ps. to Rs.2,71,365/- for the year 2000-2001 (Ex.P10) and a further enhancement was made under Ex.P11 dated 7.10.2002 from Rs.2,71,365/- to 5,42,730/-. It is not in dispute that none of these demand notices were questioned either under Rule-12 (Revision) or Rule-22 (Appeal) or by way of filing any civil suit. Therefore, the contention of the learned counsel for the petitioner that respondent No.2 was precluded in law from enhancing the property tax in the face of the decree passed by the civil court is thoroughly misconceived. In our considered view the decree whose effect is confined only to the enhancement made under Ex.P2 does not have the effect of either preventing the 2nd respondent from making a further enhancement of property tax for future years or taking steps for recovery of taxes due under such demand notices.

As regards the contention of the learned counsel for the petitioner that the enhancement of property tax from years 2000-01 was not preceded by any notice, it is necessary to refer to the procedure prescribed for enhancement of property tax and recovery thereof. Under Rule 10(1) of the Taxation and Finance Rules, framed under Schedule-II of the Act, when the assessment books have been prepared for the first time and whenever a general revision of such books has been completed the Commissioner shall give public notice stating that revision petitions will be considered if they reach the

municipal office within a period of 60 days from such notice in case of Government or Railway administration or a Company and within 30 days in other cases. The first proviso to said rule envisages that when there is an enhancement in the assessment, the Commissioner shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned. Rule-11, inter alia provides that in case the Commissioner increases the assessment of any property tax otherwise than in consequence of general enhancement of the rate at which the property tax is leviable, he shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within 60 days from the date of service of such notice in case of a Government or Railway administration or a Company and within 30 days from the said date in other cases. Under Rule 12 any person may file a revision petition before the Commissioner to reduce the tax on the grounds mentioned therein. Rule 22(1) inter alia provides for an appeal to the Appellate Commissioner against an order passed by the Commissioner in revision.

As already noted supra in the additional counter affidavit it is specifically contended that a special notice for the year 2002-03 was served by Sri K.Bhupal Reddy, s/o.K.Yadi Reddy, Bill Collector on Sri Devender Singh, Manager of the petitioner industry and that the latter refused to sign on such special notice. It is also specifically averred that subsequent notices dated 18.8.2003, 28.1.2006, 29.7.2006 and 11.11.2006 were served on the security staff as the municipal staff were not allowed to enter inside the premises of the petitioner industry. No rejoinder has been filed to this additional counter affidavit denying the specific averments.

Assuming that the enhancements were made without following the proper procedure, it would have been open to the petitioner to question to demand notices before the appropriate forum as prescribed under the Rules framed under Schedule-II of the Act. The petitioner failed to question the validity of any of the demand notices after the demand notice dated 12.12.1990 which was subject matter of the suit was issued. The demand notice dated 11.11.2006 which is questioned in the present writ petition is merely a notice which contained current property tax, arrears and the penalty which were demanded in pursuance of the earlier enhancements. As already mentioned supra, none of the enhancements made preceding the said demand, was questioned by the petitioner. The demand notice impugned in this writ petition is only a last of the notices which were being issued from time to time and it is based on the previous enhancements of the property taxes. Unless the very enhancement of the taxes made earlier from time to time is questioned by availing the remedies provided under the Rules framed under Schedule-II, the petitioner cannot question the demand notice dated 11.11.2006 which is impugned in this writ petition. The writ petition is therefore wholly ill-conceived and consequently liable to be dismissed.

Coming to the conduct of respondent No.2 in failing to discharge his/her functions, the laidback approach displayed by respondent No.2 is baffling, to say the least. Respondent No.2 while filing the counter affidavit after taking her own time, has the audacity to state in para-11, which is already extracted in the foregoing that it has to be verified whether any appeal was preferred by the municipality against ex parte decree dated 1.4.1996 passed in O.S.No.478 of 1994. We are at a loss to know what prevented the 2nd respondent from ascertaining with reference to the record whether an appeal was in fact filed or not.

Even assuming that information was not readily available at the time of filing the counter affidavit, we are unable to understand why the said information could not be furnished in the additional counter affidavit filed by the incharge Commissioner one month after the filing of the main counter affidavit. This attitude on the part of the Commissioner and Incharge Commissioner of the 2nd respondent municipality reveals their lack of accountability to the office which they hold. We are indeed perplexed to observe the lackadaisicalness of the official machinery in safeguarding the public revenue. The Appellate Commissioner dismissed the appeal filed under Rule 22 of Schedule-II of the Act on 1.6.1993. Thereafter no effort was made to recover the enhanced taxes. It is only after one year three months of the dismissal of the appeal by the Appellate Commissioner that the petitioner filed suit on 23.9.1994. There was absolutely no reason why the taxes demanded under the demand notice dated 12.12.1990 could not be recovered after the dismissal of the appeal and before the suit was filed by the petitioner. There could also be no valid reason for the 2nd respondent for failing to contest I.A.No.917 of 1994 filed in the suit for injunction against recovery of tax demanded under notice dated 12.12.1990. The second respondent remained ex parte and allowed granting of injunction in favour of the petitioner on 8.11.1994. Further by remaining ex parte in the suit, the 2nd respondent facilitated passing of an ex parte decree in the suit on 1.4.1996. As already discussed above neither the said decree was questioned in appeal nor respondent No.2 has any knowledge whether an appeal was filed or not.

The abject failure of respondent No.2 in enforcing the demands made from time to time as brought out in the narration given in the early part of this order is further evident from the following facts.

Property tax was enhanced on 10.2.1995, 13.12.2001 and 7.10.2002, from Rs.55,585/- to Rs.5,42,730/-. Having enhanced the taxes to Rs.1,11,168/- and issued a demand notice dated 10.2.1995, respondent No.2 failed to take any steps to recover the said tax. Even after the suit was disposed of on 1.4.1996, there was no attempt to collect the taxes for almost 6 ½ years when property tax was again enhanced vide notice dated 13.12.2001. Even after the further enhancement made by notice dated 7.10.2002, respondent No.2 failed to take any steps to enforce the demand except following the ritual of sending periodical notices only to consign them to record. In paras-11 and 12 of the counter affidavit which were already extracted above Smt.K.Shiva Parvathi asserted in categorical terms that the petitioner has not challenged the enhancements made in 1990; that therefore the decree obtained by the petitioner has no application to the said enhancements and that the petitioner is bound to pay the enhanced property tax from 10.2.1995. From this unequivocal assertion it is clear that respondent No.2 was not labouring under illusion that either the pendency of the suit or the decree passed therein prevented them from taking steps for recovery of the taxes. The rules made under Schedule-II of the Act provide wide powers to respondent No.2 to recover the property tax by way of distraint and also by invoking the provisions of Revenue Recovery Act (Rules 29 to 36). There is absolutely no perceptible reason for respondent No.2 not to initiate any measures prescribed under the said rules. After careful analysis of the facts we have no option but to come to an irresistible conclusion that the successive functionaries of respondent No.2 have actively connived with the petitioner in its evasion of payment of tax legitimately due to the Kukatpally municipality from 1991-92 and acted against its interest and the interests of the public. We therefore feel

that respondent No.1 shall initiate appropriate steps to conduct a thorough investigation into this aspect. We direct the Principal Secretary, Municipal Administration to appoint an officer not below the rank of Deputy Secretary to enquire into the issue concerning failure of respondent No.2 to recover the property tax from the petitioner, identify the persons at various levels responsible in this regard and initiate appropriate action according to law. Principal Secretary, Municipal Administration is directed to ensure that the enquiry is completed within one month from today and he shall submit a report to this Court within one week thereafter. The Registry shall immediately thereafter place the report before this court.

In the result the writ petition is dismissed. Since the petitioner abused the process of the Court by filing a vexatious petition we saddle it with exemplary costs of Rs.10,000/-. The petitioner shall pay the costs to the Andhra Pradesh Legal Services Authority within a period of two weeks from today.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 26 .06.2007.
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